STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMER SHAMI

Defendant-Appellant.
_____/

Supreme Court No. 155273

Court of Appeals No. 327065

Wayne CC: 14-011190-FH

PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF IN SUPPORT OF DENYING DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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QUESTIONS PRESENTED

1. Whether the defendant's activities of mixing different flavors of tobacco to create new flavor combinations to offer customers and repackaging tobacco under his own label rendered him a "manufacturer" of tobacco under MCL 205.422(m) of the Tobacco Products Tax Act (TPTA), MCL 205.421 *et seq.*?

   District Court: Yes

   Circuit Court: No

   Court of Appeals: Yes

   Defendant Shami: No

   People of the State of Michigan: Yes

2. Whether the TPTA's definition of "manufacturer" satisfied due process by putting the defendant on fair notice of the conduct that would subject him to punishment?

   District Court: Not raised

   Circuit Court: No

   Court of Appeals: Not raised

   Defendant Shami: No

   People of the State of Michigan: Yes

INTRODUCTION

This case involves a routine question of statutory interpretation, namely the meaning of the everyday words "manufactures or produces," which are used to define the word "manufacturer" in the Tobacco Products Tax Act. MCL 205.422(m). The People charged the defendant, Samer Shami, with one count of manufacturing tobacco products without a manufacturer license based on his activities of making a new tobacco product by mixing and repackaging tobacco. Without any analysis, the circuit court concluded "blending two types of hookah tobacco does not constitute manufacturing" and dismissed the charge. Final Conference Tr, p 25. The Court of Appeals reversed, following well-established rules of statutory interpretation and according the terms at issue their plain meaning, and then applying that meaning to the facts established at the preliminary examination.

This Court should deny Shami's application for leave to appeal. The Court of Appeals accurately interpreted the terms "manufacturer," "manufactures," and "produces" and reasonably concluded that the district court did not abuse its discretion in holding there is probable cause to believe defendant manufactured more than $250 worth of non-cigarette tobacco without a manufacturer license. The Court should also reject Shami's argument that the Act failed to put him on notice that his conduct was illegal because this argument lacks merit and is unpreserved. Reversing the Court of Appeals would violate the intent of the Legislature and facilitate tobacco tax evasion by undermining the integrity of the Tobacco Products Tax Act's regulatory regime.

STATEMENT OF FACTS

Overview of the Tobacco Tax Products Act

Twenty-three years ago, the Legislature enacted the Tobacco Products Tax Act (TPTA), MCL 205.421 *et seq*. The Act brings in over $930 million of tobacco tax revenue every year. Http://www.house.mi.gov/hfa/PDF/Revenue_Forecast/Source_and_Distribution_Mar17.pdf; http://www.house.mi.gov/hfa/PDF/Tobacco_Settlement_Funds.pdf. Nearly all of the tax revenue from the Act is earmarked for the funding of Michigan's public schools, Medicaid program, and general fund. See MCL 205.432. This revenue comes from the Act's levy of a tax on cigarettes of $0.10 per cigarette stick and a tax at the rate of approximately 32% of the wholesale price for non-cigarette tobacco products (called other tobacco products). Licensed wholesalers and unclassified acquirers purchase tax stamps from the Department of Treasury and then apply those stamps to packages of cigarettes to demonstrate cigarettes are tax paid in the market place. There is no tax stamp applied to other tobacco products in the market place. Rather, licensed wholesalers and unclassified acquirers remit the tax due on other tobacco products to Treasury after they import those products into Michigan. Retailers may obtain and sell only taxed tobacco products.

To ensure tax on other-tobacco-products is collected, the Act creates a licensing system with detailed labeling, record-keeping, and reporting requirements for participants involved in almost every phase of the industry. The Act also allows Treasury to conduct warrantless inspections of participants' operations to ensure

compliance with the Act. Failure to adhere to the Act's labeling, record-keeping, and reporting requirements makes it difficult, if not impossible, for Treasury to track tobacco and ensure that the correct amount of tax is collected. Accordingly, the Act outlines criminal penalties for offenders who violate its provisions.

Application of the Act to Shami's conduct

In May 2013, Treasury employees and Michigan State Police officers acting on behalf of Treasury, conducted an administrative inspection at Sam Molasses, LLC in Dearborn. While the inspection was ongoing, Shami appeared at the store and admitted that he handled all the day-to-day operations of the store. PE 1, p 41. During the inspection, Treasury agents found evidence suggesting that Shami was mixing and repackaging tobacco in two distinct manners.

First, Treasury agents found evidence indicating that defendant was mixing hookah tobacco in large plastic containers and then reselling this tobacco by the pound to retail customers. The front of Sam Molasses, LLC's store is a retail area with cans and boxes of various flavors of hookah tobacco and hookah pipe accessories presented for sale. PE 1, pp 70–72. Molasses tobacco is a type of hookah tobacco. During the inspection, MSP Detective Sergeant Stephanie Cleland observed seven blue Tupperware containers that contained hookah tobacco in this area. PE 1, p 71. Different signs near these containers advertised the different flavors available inside as being for sale at $19.99 per pound. *Id.* Shami admitted that "he does mix two or three blends, flavors of tobacco together to come up with a special blend that was subsequently that was [sic] put in these plastic tubs." PE 1,

pp 16–18. The labels on these Tupperware containers did not correspond to any tobacco products identified on invoices discovered during or subsequent to the inspection, confirming defendant was creating a new product. PE 1, pp 27, 68.

Second, Treasury agents found evidence indicating that defendant was purchasing hookah tobacco from Jordan in bulk and repackaging it in smaller containers under his own brand in the back storage area of the business. When Treasury agents went into the back warehouse area of the building used by Sam Molasses, LLC, they observed boxes containing clear packets of molasses hookah tobacco. PE 1, pp 54–55. Some of the boxes bore stickers indicating the hookah tobacco inside originated in Jordan. PE 1, p 84–85. On a table in the warehouse area, there were silver tins and clear plastic packets containing hookah tobacco. PE 1, p 72. Some of the tins were empty, and some contained clear plastic bags with hookah tobacco inside. *Id*. Shami opened these bulk packets of hookah tobacco, dispersed the contents into the smaller tins, labeled the tins with his own "360" brand, and later sold the tins. PE 1, p 55.

Proceeding in the lower courts

The Department of Attorney General charged Shami with one felony count for manufacturing more than $250 worth of other tobacco products without a manufacturer license. After the charge was bound over for trial, the circuit court dismissed it, stating that "blending two types of hookah tobacco does not constitute manufacturing." Final Conference Tr, p 25. The Court of Appeals considered the plain meaning of the words "manufactures" and "produces" within MCL

205.422(m)(i), recognized that Shami had produced a new product, and accordingly reversed and remanded the matter for trial.

Ordering argument on the application, this Court directed the parties to address (1) whether the defendant's activities of mixing different flavors of tobacco to create different flavor combinations to offer customers and repackaging tobacco under his own label rendered him a "manufacturer" of tobacco under MCL 205.422(m) of the TPTA, MCL 205.421 *et seq*.; and, if so, (2) whether the TPTA's definition of "manufacturer" satisfied due process by putting the defendant on fair notice of the conduct that would subject him to punishment.

STANDARD OF REVIEW

"In order to bind a defendant over for trial in the circuit court, the district court must find probable cause that the defendant committed a felony." *People v Seewald*, 499 Mich 111, 116 (2016). Absent an abuse of discretion, a reviewing court should not disturb the district court's bindover decision. *Id.* "Determining the scope of a criminal statute is a question of statutory interpretation" that this Court reviews *de novo*. *Id.*

ARGUMENT

I. Shami's activities of mixing different flavors of tobacco to create a new product under his own label rendered him a "manufacturer" of tobacco under the Tobacco Products Tax Act.

The Act defines the word "[m]anufacturer" to mean any of the following:

> (i) A person who *manufactures* or *produces* a tobacco *product*.

> (ii) A person who operates or who permits any other person to operate a cigarette making machine in this state for the purpose of producing, filling, rolling, dispensing, or otherwise generating cigarettes. A person who is a manufacturer under this subparagraph shall constitute a nonparticipating manufacturer for purposes of sections 6c and 6d. A person who operates or otherwise uses a machine or other mechanical device, other than a cigarette making machine, to produce, roll, fill, dispense, or otherwise generate cigarettes shall not be considered a manufacturer as long as the cigarettes are produced or otherwise generated in that person's dwelling and for that person's self-consumption. For purposes of this act, "self-consumption" means production for personal consumption or use and not for sale, resale, or any other profit-making endeavor. [MCL 205.422(m) (emphasis added).]

Under the Act, manufacturers must obtain a license: "[A] person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer . . . in this state unless licensed to do so. A license granted under this act is not assignable." MCL 205.423(1). Failure to comply with this licensing requirement leads to criminal liability: anyone "who possesses, acquires, transports, or offers for sale contrary to this act" any "tobacco products other than cigarettes with an aggregate wholesale price of $250.00 or more" is "guilty of a felony, punishable by a fine of not more than $50,000.00 or imprisonment for not more than 5 years, or both." MCL 205.428(3).

A. The Court of Appeals properly applied well-established rules of statutory interpretation.

"The cardinal rule of statutory construction is to discern and give effect to the intent of the Legislature." *People v Williams*, 491 Mich 164, 172 (2012), quoting *People v Dowdy*, 489 Mich 373, 379 (2011). "This Court may best discern that intent

by reviewing the words of a statute as they have been used by the Legislature." *Id.* "When a statute's language is clear and unambiguous, this Court will enforce that statute as written." *Id.*, citing *People v Kowalski*, 489 Mich 488, 498 (2011). "When a statute specifically defines a given term, that definition alone controls." *Cain v Waste Management, Inc*, 472 Mich 236, 245 n 4 (2005). The best way to determine the Legislature's intent is by giving plain meaning to the words actually used, rather than presuming that the Legislature meant to say something entirely different. *Williams*, 491 Mich at 175. This Court may consult dictionaries to discern the meaning of statutorily undefined terms. *Cain*, 472 Mich at 247, quoting *People v Stone*, 463 Mich 558, 563 (2001).

The Court of Appeals acknowledged these principles and then examined the definition of "manufacturer" in MCL 205.422(m): "[a] person who manufactures or produces a tobacco product." Recognizing that the words "manufactures" and "produces" are not defined by the Act, the Court of Appeals then examined the dictionary definition of those words and noted that the verb form of "manufacture" means "'to make into a product suitable for use' and 'to make from raw materials by hand or by machinery[.]' *People v Shami*, 318 Mich App 316, 322 (2016), quoting *Merriam-Webster's Collegiate Dictionary* (11th ed.). And it noted that the verb form of "produce" means "'to make available for public exhibition or dissemination,' 'to cause to have existence or to happen: BRING ABOUT . . . to give being, form, or shape to: MAKE; [*especially*]: MANUFACTURE,' and 'to compose,

create, or bring out by . . . physical effort[.]' " *Id.*, quoting *Merriam-Webster's Collegiate Dictionary* (11th ed.).

B. Under the plain meaning of the statutory language, Shami manufactured or produced tobacco.

The Legislature's definition of the word "manufacturer" is purposefully broad. Rather than leaving the term "manufacturer" undefined or defining the term "manufacturer" as only "a person who *manufactures* a tobacco product," the Legislature defined the term "manufacturer" to also include those who "*produce*" tobacco products. The dictionary definitions quoted by the Court of Appeals demonstrate that "manufactures" means something different than "produces." And so does the fact that the Legislature used both words: "every word should be given meaning, and we should avoid a construction that would render any part of the statute"—here, the word "produces"—"surplusage or nugatory." See *People v Peltola*, 489 Mich 174, 181 (2011). By incorporating the additional word "produces" into the definition of "manufacturer," the Legislature demonstrated its intent to define the term "manufacturer" broadly. Indeed, this is parallel to language used in federal and state drug laws, which make it a crime to "manufacture" or "create" a "mixture" of certain drugs. E.g., 21 USC 841(a), (b); see also MCL 777.45(1)(a) (offense variable for "the *manufacture*, *creation*, delivery, possession, or possession with intent to manufacture, create, or deliver of 1,000 or more grams of any *mixture* containing a controlled substance") (emphasis added).

A person does not have to engage in every stage of the manufacturing and production process to be considered a "manufacturer." MCL 205.422(m)(i) is written in the disjunctive, meaning one can be considered a "manufacturer" by manufacturing *or* producing a tobacco product. In addition, as the definitions applied by the Court of Appeals demonstrate, the terms "manufactures" and "produces" encompass multiple acts within an expansive process. Under the dictionary definitions used by the Court of Appeals, to "manufacture" includes making something from raw materials and making something suitable for use. "Produces" means creating, composing, or making available for dissemination or exhibition. The manufacturing of a product often involves many different individuals performing discrete steps: creating components from raw materials, assembling those parts, placing a logo on those assembled parts, packaging that product, and shipping that product for eventual display and sale. A person involved in any one of those steps manufactured or produced that product. Thus, a person who engages in any act that can be considered manufacturing or production, or any step in a larger manufacturing or production process, is a "manufacturer" under the Tobacco Products Tax Act.

In the instant case, Shami did not engage in every stage of the manufacturing process, but he did participate in the final stages of it. The first series of actions at issue involved Shami removing the packaging of different types of hookah tobacco, mixing the different hookah tobaccos together in Tupperware containers to create a new product, branding that product with his own

advertisements, and then selling that new product to consumers. His actions brought into existence an entirely new hookah tobacco product—something he called his own "special blend," PE 1, pp 16–18—that was different and unique in flavor, texture, and composition. Shami himself treated it as a new product by putting his own label on it, and the new product was also recognizable by consumers as a new product through its changed method of delivery and branding.

The fact that Shami labeled and sold the mixed tobacco as a separate product further confirms that he "produce[d]" a tobacco "product." After all, a "product" is "something produced," *Merriam-Webster's Collegiate Dictionary* (10th ed.), and if Shami had not produced that new tobacco product (a type of noncigarette smoking tobacco, MCL 205.422(w)), it would not exist. Someone produced it, and the ordinary English speaker would say that it was Shami who produced that product.

Shami produced new products in different ways. First, by obtaining a different product from an international distributor, removing the packaging, mixing different flavors to create his own blend, and then offering that new blend for sale, Shami made the hookah tobacco suitable for use, public exhibition, and dissemination. Second, it is also undisputed that Shami obtained cases of hookah tobacco in bulk from Jordan, repackaged that tobacco, branded it, and made it available for sale in smaller containers. Again, by obtaining the product from an international distributor, removing the packaging, and rebranding the hookah tobacco, he made the tobacco suitable for use, public exhibition, and dissemination.

Accordingly, under the plain meaning of the word, Shami produced hookah tobacco by engaging in this activity as well.

In both instances, Shami changed the packaging, quantity, and composition of the hookah tobacco. In his application, Shami repeatedly suggests he did not sufficiently change the tobacco by noting that he received the original tobacco "in a condition already as fit for human consumption as it would ever be." Appl'n, pp 11, 12, 24, 25, 27, 28, vi. But the fact that individual parts might be already fit for sale does not mean that combining them is not producing something new. For example, companies exist for the purpose of making trail mix (a combination of separately consumable ingredients) and salad, and it fits comfortably into ordinary English to say that those companies produce trail mix and salad mixes. Similarly, even a pedantic English teacher would not correct a student for saying that a florist produced a flower arrangement (even though the flowers were already individually complete before being mixed together into one arrangement) or that a pharmacist produced a drug (even though the pharmacist merely mixed pre-existing drugs). And, as already noting, mixing drugs counts as manufacturing or creating drugs under state and federal criminal law. E.g., MCL 777.45(1)(a); 21 USC 841(a), (b).

Further, the changes Shami made to the hookah tobacco packaging undermined the very purposes of the Tobacco Products Tax Act: they prevented Treasury from being able to identify where the hookah tobacco came from or whether it had ever been taxed under the Act. Excusing defendant's conduct would facilitate tax evasion, as unclassified acquirers (like Sam Molasses, LLC),

wholesalers, or retailers could mix or repackage tobacco products or both and mask where they originated. For example, if the Court of Appeals were reversed, and the charge dismissed, an unclassified acquirer could purchase some tobacco products from a licensed manufacturer. The unclassified acquirer could then purchase additional tobacco products from an unlicensed person who purchased a semi-truck load of tobacco products from a state that does not have a tobacco tax. The unclassified acquirer could then mix the legitimately purchased tobacco products with the illegitimately purchased tobacco products in a plastic tub. On inspection, the unclassified acquirer could produce invoices for the legitimately purchased tobacco products and claim that the tobacco products in the tubs came from that source alone. Treasury would thus have no way of determining where the tobacco products originated and whether the tobacco tax had been paid on the product, thereby frustrating the intent of the Legislature.

II. The TPTA's definition of "manufacturer" satisfied due process by putting defendant on fair notice that his conduct would subject him to punishment.

A. The standard to determine whether a defendant was given sufficient notice by the law with which he has been charged is well-settled.

"Due process requires that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.'" *People v Hall*, 499 Mich 446, 461 (2016), quoting *BMW of North America, Inc v Gore*, 517 US 559, 574 (1996). "Statutes are presumed to be constitutional, and [courts] have a duty to construe a statute as constitutional

unless its unconstitutionality is clearly apparent." *In re Sanders*, 495 Mich 394, 404 (2014). "The party challenging the constitutionality of a statute bears the burden of proving that the law is unconstitutional." *People v Harris*, 495 Mich 120, 134 (2014).

"The pertinent inquiry is whether the . . . statute gives a person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited," and also whether the statute provides sufficient guidance to fact-finders in order to avoid arbitrary enforcement." *People v Harris*, 495 Mich 120, 134 (2014), citing *Grayned v City of Rockford*, 408 US 104, 108-109 (1972). "A statute is not vague if the meaning of the words in controversy can be fairly ascertained by referring to their generally accepted meaning." *People v Harris*, 495 Mich 120, 138 (2014). "[A] statute is not vague when the meaning of the words in controversy can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises or even the words themselves, if they possess a common and generally accepted meaning." *People v Harris*, 495 Mich 120, 138 n 49 (2014), quoting *People v Cavaiani*, 172 Mich App 706, 714 (1988). Ignorance of the law does not excuse violation of the law. *People v Longwell*, 120 Mich 311, 317 (1899).

B. Application of well-settled due process law should result in denial of defendant's unpreserved due-process argument.

The Legislature's decision to include the term "produces" with "manufactures" in MCL 205.422(m)(i) puts people of average intelligence on notice that "manufacturer" would be interpreted broadly. The Legislature's decision to

define "manufacturer" to include "produc[ing]" a tobacco product demonstrates its intent to encompass a broad range of activity. Moreover, the terms "manufactures" and "produces" are common words Michiganders would understand as relating to an expansive process involving many different types of activity. Any person who was unsure of the meaning of these words could do what courts do and pick up a dictionary and find a long list of conduct included within their meaning. In short, it would not surprise someone of average intelligence that the scope of the term "manufacturer" covers someone who admittedly creates a new tobacco product.

Not only is the meaning of "produces" and "manufactures" clear, but a complete reading of the Tobacco Products Tax Act would demonstrate the necessity of prohibiting defendant's conduct. Accurate collection of the tobacco tax on other tobacco products is dependent upon fulfillment of labeling, record-keeping, and reporting requirements set forth in the Act. Those who manufacture tobacco products that are sold in Michigan must obtain a license and must file a monthly report with Treasury documenting their sales to wholesalers and unclassified acquirers. MCL 205.423(1); MCL 205.423(3)(d)(v); MCL 205.427(11). Wholesalers and unclassified acquirers that purchase or otherwise acquire tobacco products from manufacturers or other distributors must also obtain a license and file monthly returns with Treasury. MCL 205.423(1); MCL 205.427(2). Tobacco products must be packaged and labelled. MCL 205.426(1), (4), (6). Invoices documenting these acquisitions and sales must contain numerous elements. MCL 205.426(1), (4), (6). All of these requirements exist so that Treasury can track tobacco product sales

from manufacturers, through distributors and transporters, and ultimately to retailers. This tracking system, if followed, allows Treasury to verify unclassified acquirers and wholesalers are remitting the appropriate tobacco tax. If people are allowed to repackage tobacco products and mix them together and then sell that product at retail without a license and without complying with the reporting and record-keeping requirements as Shami did, it would often be impossible for Treasury to determine where the tobacco products came from and whether the tobacco tax was paid, rendering large portions of the Tobacco Products Tax Act meaningless. A person with average intelligence would understand that mixing, repackaging, and rebranding tobacco products for resale without a license and without complying with all the reporting duties that come with obtaining such a license would severely limit the effectiveness of the Act.

Denying the defendant's application for leave to appeal would not make every consumer that rolls her own cigarettes a tobacco manufacturer. MCL 205.422(m)(ii) specifically exempts consumers who produce cigarettes for their own personal consumption:

> A person who operates or otherwise uses a machine or other mechanical device, other than a cigarette making machine, to produce, roll, fill, dispense, or otherwise generate cigarettes shall not be considered a manufacturer as long as the cigarettes are produced or otherwise generated in that person's dwelling and for that person's self-consumption. For purposes of this act, "self-consumption" means production for personal consumption or use and not for sale, resale, or any other profit-making endeavor.

The plain language of MCL 205.422(m)(ii) creates a safe harbor for consumers who want to roll their own cigarettes. Further, the Act as a whole makes it clear that if

a person moves beyond purchasing tobacco products for personal use or producing tobacco products in compliance with MCL 205.422(m)(ii), that person is entering a pervasively regulated industry with detailed regulations. The statute thus does not allow for arbitrary enforcement.

The Michigan Court of Appeals recently reviewed a due-process claim against the Tobacco Products Tax Act and held that the Act gave the defendant sufficient notice. *People v Assy,* 316 Mich App 302 (2016). The *Assy* panel held that the Legislature defined "retailer" with sufficient precision to place persons of ordinary intelligence on notice . . . ." *Assy,* 316 Mich App at 311. The panel also held that "the statutory scheme is sufficiently definite to preclude arbitrary or discriminatory enforcement." *Assy*, 316 Mich App at 312, citing *People v Hayes,* 421 Mich 271 (1984)."

Shami failed to raise his due-process argument in the Court of Appeals. He raised it in this Court as an attempt to create a jurisprudentially significant issue where there otherwise was not one. This Court should not be persuaded by this argument because the Act uses plain language to define what is required and provides a sufficient statutory scheme to preclude arbitrary or discriminatory enforcement.

III. This case does not warrant further review by this Court.

This case does not warrant further review or an opinion from this Court, because the Court of Appeals' opinion applied the proper interpretative method and gave the common words "manufactures" and "produces" their ordinary meaning,

thus providing sufficient guidance for the lower courts on how to interpret the Act. The outcome of this case did not depend, as the application posits, on "secret administrative law." Quite the opposite, the Court of Appeals simply applied the Act's plain language and gave undefined terms their ordinary meaning. By turning to dictionaries, which are far from secret, the Court of Appeals addressed the issue raised just as this Court would. E.g., *People v Rea*, 2017 WL 3137772, at *4–5 (Mich, 2017) (interpreting a criminal statute, explaining that "[w]hen a word or phrase is not defined by the statute in question, it is appropriate to consult dictionary definitions to determine the plain and ordinary meaning of the word or phrase," and applying dictionary definitions); *id.* at *7–10 (Larsen, J, concurring in result) (applying the same methodology); *id.* at *10 (McCormack, J, dissenting) (applying the same methodology).

On the notice point, the plain language of "[t]he statute is itself sufficient notice." *Reetz v People of State of Michigan*, 188 US 505, 509 (1903); *Atkins v Parker*, 472 US 115, 131 (1985) ("The entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny. To contend that this notice was constitutionally insufficient is to reject that premise."). This Court has recently reinforced this point, see *In re Rasmer Estate*, slip op, p 24 (Mich, 2017) ("[W]e presume that the citizenry 'know[s] the law' . . . ."), so there is no need for review on this point either.

The Act is an important source of revenue for the state. Treasury works diligently to enforce the Act to ensure the state receives the revenue it is legally due. Affirming the Court of Appeals or denying Shami's application for leave to appeal will not, as Shami contends, affect an entire industry. Rather, it would preserve the regulatory and enforcement scheme created by the Legislature. But reversing the Court of Appeals and sanctioning defendant's conduct would create a roadmap for tax evasion. Treasury would be unable to ensure that tax due on other tobacco products was being remitted, and the intent of the Legislature would be frustrated.

CONCLUSION AND RELIEF REQUESTED

The Court of Appeals correctly held that the district court did not abuse its discretion in finding probable cause to bind this matter over for trial. The effect of affirming the Court of Appeals or denying leave to appeal would leave in place a well-reasoned Court of Appeals opinion that is consistent with the intent of the Legislature.

The People therefore respectfully request that this Court affirm the Court of Appeals or deny the defendant's application and remand this matter to the circuit court for trial.

Respectfully submitted,

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Shami Supplement MSC